

REGISTRATION NO. 60489 Filed & Recorded
NOV 12 1971 -10 25 AM
INTERSTATE COMMERCE COMMISSION

November 8, 1971

Interstate Commerce Commission
Office of the Secretary
Washington, D. C. 20423

Gentlemen:

In accordance with Section 157.4 of Title 49 of the Code of Federal Regulations, this Letter of Transmittal will serve to effect the attached Release of Security Agreement and Note. The following information is submitted, as requested:

Equipment:	One 20,000 gallon capacity class ICC-111A 100W coiled tank car initialed and numbered TGOX 2085.
Manufacturer:	General American Transportation Corporation.
Purchaser & Lessor:	A. W. Bain, Jr. 12430 Casa Mia Way Los Altos Hills, California 94022
Lessee:	Transgo, Inc. 235 Montgomery Street San Francisco, California
Secured Lender:	The Bank of California, N.A. 400 California Street P. O. Box 45000 San Francisco, California 94145
Item Recorded:	Security Agreement and Note dated December 18, 1968.

RECORDATION NO. 600-A Filed & Recorded

JAN 30 1969 -11 00 AM

INTERSTATE COMMERCE COMMISSION

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

and

SOUTHERN PACIFIC COMPANY

Agreement of Conditional Sale

Dated as of January 1, 1969

Covering sale and purchase of 34 locomotives

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

and

**THE FIRST PENNSYLVANIA BANKING
AND TRUST COMPANY,**
as Trustee

Agreement and Assignment

Dated as of January 1, 1969

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I.C.C.
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AGREEMENT OF CONDITIONAL SALE

This Agreement, dated as of January 1, 1969, by and between the Corporation named in Item 1 of Schedule A hereto (hereinafter sometimes called "Builder" or "Manufacturer" as more particularly set forth in Section 13 hereof), party of the first part, and SOUTHERN PACIFIC COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Delaware (hereinafter sometimes called "Vendee"), party of the second part,

WHEREAS, Builder has agreed to construct, sell and deliver to Vendee, and Vendee has agreed to purchase, the railroad equipment described in Schedule B hereto (hereinafter called the "Equipment");

WHEREAS, the Equipment or portions thereof may be temporarily delivered to Vendee by Builder pursuant to a Temporary Conditional Sale Agreement (hereinafter called the "Temporary Conditional Sale Agreement") between Vendee and Builder, in contemplation of the sale thereof to Vendee hereunder;

WITNESSETH:

That, in consideration of the mutual promises of the parties hereto, hereinafter set forth, the parties hereto agree as follows:

1. Builder shall build the Equipment and shall sell f.o.b. and deliver the Equipment on completion thereof to Vendee at the respective point or points indicated in Schedule B hereto, and Vendee shall accept delivery of and purchase the Equipment on completion thereof, as hereinafter provided. Each unit of the Equipment shall be constructed in accordance with the specifications referred to in Schedule B hereto and in accordance with such modifications thereof as may have been agreed upon in writing by Builder and Vendee (which specifications and modifications, if any, are hereby made a part hereof and are hereinafter called the Specifications). The design, quality and component parts of the Equipment will conform to all Department of Transportation requirements and specifications for new equipment and to all

standards, if any, recommended by the Association of American Railroads, interpreted as being applicable to new railroad equipment of the character of the Equipment as of the date of this Agreement.

Builder shall bear the responsibility and risk of loss or damage to any unit of Equipment in transit until delivery to and acceptance by Vendee at the place of delivery indicated in Schedule B hereto, and upon delivery and acceptance Vendee will assume with respect thereto the responsibility and risk of loss or damage.

2. The base price or prices per unit of the Equipment are set forth in Schedule B hereto. The base price or prices are subject to such increase or decrease as may be agreed to by Builder and Vendee. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased.

For the purpose of making payment for the Equipment, the Equipment shall be divided into groups of units of Equipment (each such group being hereinafter called a Group), each Group to consist of all units of Equipment delivered to and accepted by Vendee in the calendar month immediately preceding the Closing Date (as hereinafter defined).

The term "Closing Date" with respect to any Group shall mean such date, not later than the 25th day of the calendar month immediately following presentation by Builder to Vendee of the invoice for such Group and the certificates of acceptance in respect thereof, as shall be fixed by Vendee by written notice delivered to Manufacturer at least seven business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays, and holidays.

Vendee hereby promises to pay to Manufacturer the Purchase Price of the Equipment in the following manner:

(a) on the Closing Date with respect to each Group, (i) 20% of the Purchase Price of the Equipment in such Group, as stated in the invoice or invoices therefor, plus (ii) the amount, if any, by which 80% of the Purchase Price of all Equipment covered by this Agreement and 80% of the purchase price of the railroad equipment covered by the other Agreements of Conditional

Sale entered into by Vendee pursuant to the Agreement dated as of the date hereof among The First Pennsylvania Banking and Trust Company, as Trustee, the parties named in Annexes A and B thereto and Vendee, as stated in the invoice or invoices therefor, for which settlement has theretofore been and is then being made, exceeds the sum of \$29,900,000 and any amount or amounts previously paid or payable pursuant to this subparagraph (a) or subparagraph (a) of the fourth paragraph of Section 2 of such other Agreements of Conditional Sale; and

(b) in 15 consecutive substantially equal annual instalments as hereinafter provided, an amount equal to the Purchase Price of the Equipment in each Group, as stated in the invoice or invoices therefor, less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

It is understood that the invoice for the final Group shall, if any invoices theretofore delivered were based on an estimated Purchase Price, include the excess of the actual Purchase Price of all Equipment delivered and accepted hereunder over the aggregate of the Purchase Price of all Groups theretofore delivered and accepted hereunder (as shown on the invoices therefor). Builder agrees that the Purchase Price of each Group (as shown in the invoice or invoices therefor) shall be so fixed that the aggregate of the Purchase Price of all Groups (as shown in the invoices therefor) shall not exceed the actual Purchase Price of all Equipment delivered and accepted hereunder.

If this Agreement shall have been assigned by Builder, the obligations of Vendee under subparagraph (a) of the preceding paragraph of this Section 2 shall be unsecured obligations and Builder shall not have any lien on, or claim against, the Equipment or any part thereof in respect of such obligations.

The first instalment of the portion of the Purchase Price of each Group payable pursuant to subparagraph (b) of the fourth paragraph of this Section 2 shall be payable on January 1, 1970, and subsequent instalments shall be payable annually thereafter on January 1 of each year to and including January 1, 1984. Such instalments of the Purchase

Price shall bear interest from the respective Closing Dates at the rate of 6.90% per annum, such interest to be payable semiannually on January 1 and July 1 in each year, commencing on the first of such dates occurring after such Closing Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

Vendee will pay, to the extent legally enforceable, interest at the rate of 8% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Section 9 hereof, Vendee shall not have the privilege of prepaying any instalment of indebtedness hereunder prior to the date it becomes due.

3. Builder shall give Vendee full opportunity to inspect the Equipment during the construction thereof at its shops where the Equipment is being constructed. Vendee reserves the right to place as many inspectors as it may deem necessary at Builder's shops, and said inspectors shall have free access at all times to all drawings and work in order to ascertain whether the provisions of the applicable Specifications are in all respects complied with. It is expressly understood that Builder shall be responsible for all materials purchased by it, since such materials will not be inspected by Vendee at points of origin. Any materials or details that do not conform to the purchase order and applicable Specifications will be rejected and must be replaced by Builder. On completion of each unit of Equipment, Vendee shall arrange for inspection thereof and shall have its inspector execute and deliver to Builder the usual form of Certificate of Inspection covering all Equipment inspected. Vendee shall arrange also for acceptance of the Equipment by a duly authorized agent upon arrival thereof at the place of delivery set forth in Schedule B hereto, which agent shall execute and deliver to Builder the usual form of Certificate of Acceptance.

4. Builder has delivered, pursuant to the Temporary Conditional Sale Agreement, if any, described in Item 3 of Schedule A hereto, or shall deliver the Equipment at the respective point or points indicated in Schedule B hereto ready for service and free of all liens, encumbrances and security interests and free of any claims of any nature by or in favor of any person or party, and subject only to the reservation of title thereto by Manufacturer in accordance with the provisions hereof. Equipment must not be delivered until inspected by Vendee's agent in the manner provided in Section 3 hereof.

Builder's obligation as to time of delivery, as set forth in Schedule B hereto, is subject, however, to delays resulting from causes beyond Builder's reasonable control, including, but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, or delays in receiving necessary materials.

Notwithstanding the preceding provisions of this Section 4, any Equipment not delivered, accepted and settled for on or before December 31, 1969, shall be excluded from this Agreement and not included in the term Equipment as used in this Agreement. In the event of any such exclusion, Manufacturer and Vendee shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment theretofore delivered, accepted and settled for hereunder.

If Builder's failure to deliver Equipment so excluded from this Agreement results from one or more of the causes set forth in the second paragraph of this Section 4, Vendee shall nevertheless be obligated to accept any such Equipment and pay the full Purchase Price therefor if and when such Equipment shall be completed and delivered by Builder, such payment to be in cash either directly or, in case Vendee shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as Vendee shall determine which will assure Builder of prompt payment in full for such Equipment.

5. Builder shall indemnify and save harmless Vendee against all royalties, damages, claims, suits, actions or other proceedings, and against all expenses, including counsel fees, incurred and judgments

entered as a result thereof, arising in any way out of alleged infringement of patents or other rights covering the Equipment, or any part or appliance thereof, except in the case of devices and specialties designated by Vendee to be used by Builder in the building of the Equipment and which are not manufactured by Builder; and Vendee, in like manner, shall indemnify and save harmless Manufacturer against all royalties, damages, claims, suits, actions or other proceedings, and against all expenses, including counsel fees, incurred and judgments entered as a result thereof, arising in any way out of alleged infringement of patents or other rights by reason of the use of or incorporation in the Equipment of any said devices or specialties so designated by Vendee to be used by Builder in the construction of the Equipment and which are not manufactured by Builder.

Prompt notice in writing shall be given by each party to the other of any claim of patent or other infringement known to such party with respect to the Equipment, and the party responsible for such infringement as above provided shall promptly undertake and assume the defense thereof, and the other party shall give reasonable assistance to the responsible party in the defense thereof.

The covenants of indemnity contained in this Section 5 shall continue in full force and effect notwithstanding the full payment of all sums due hereunder, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

6. All payments by Vendee hereunder shall be free of expenses to Manufacturer for collection or other charges, any local, state or federal taxes (other than income, gross receipts [except gross receipts taxes in the nature of sales taxes], excess profits, business, occupation and similar taxes) or license fees hereafter levied or imposed upon, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes and license fees Vendee assumes and agrees to pay on demand in addition to the indebtedness in respect of the Purchase Price of the Equipment. Vendee will also pay promptly all taxes, assessments and governmental charges which may be imposed upon the Equipment delivered to it, or for the use or operation thereof by Vendee, or upon

the earnings arising therefrom, or upon Manufacturer solely by reason of its ownership thereof, and will keep at all times each unit of the Equipment free and clear of all taxes, assessments and governmental charges which might in any way affect the title of Manufacturer or result in a lien upon any unit of the Equipment; *provided, however*, that Vendee shall be under no obligation to pay any expenses, taxes, assessments, governmental charges, license fees, charges, fines or penalties of any kind, so long as it is contesting in good faith and by appropriate legal proceedings such expenses, taxes, assessments, governmental charges, license fees, charges, fines or penalties, and the non-payment thereof does not, in the opinion of Manufacturer, adversely affect the property or rights of Manufacturer hereunder. If any such expenses, taxes, assessments, governmental charges, license fees, charges, fines or penalties shall have been charged or levied against Manufacturer directly and paid by Manufacturer, Vendee shall reimburse Manufacturer on presentation of an invoice therefor and any sums of money so paid by Manufacturer shall be secured by and under this Agreement; *provided, however*, that Vendee shall not be obligated to reimburse Manufacturer for any expenses, taxes, assessments, governmental charges, license fees, charges, fines or penalties so paid unless Manufacturer shall have been legally liable in respect thereof, or unless Vendee shall have approved the payment thereof.

Vendee shall comply in all respects with all laws of the United States of America and of the jurisdictions in or through which the Equipment may be operated, covering the use, operation or maintenance of the Equipment, with the Interchange Rules of the Association of American Railroads and with the lawful rules with respect to the Equipment of the Department of Transportation, the Interstate Commerce Commission and every other legislative, administrative or judicial body exercising any power or jurisdiction over the Equipment; and in the event that the said laws or rules require any alterations of any Equipment, or any additional equipment or appliances thereon, Vendee shall conform thereto at its own expense and shall maintain the Equipment in proper condition for operation under such laws and rules during the life of this Agreement.

7. Manufacturer shall retain full legal title to and property in all the Equipment until Vendee shall have made all the payments and shall have performed all of the covenants in this Agreement provided to be made, kept or performed by Vendee, notwithstanding the delivery of any of or all the Equipment to and the possession and use thereof by Vendee as herein provided. Any and all replacements of parts of the Equipment or additional equipment or facilities installed thereon or therein (except such thereof as may be removed without in any way affecting or impairing the originally intended function or use of such Equipment) shall constitute accessions to the Equipment, the title to which shall be immediately vested in Manufacturer, and which shall be subject to all the terms, reservations and conditions of this Agreement. When Vendee shall have paid in full the entire Purchase Price for all the Equipment, with interest thereon, and all other payments herein provided to be made by Vendee with respect thereto and shall have performed all its obligations herein contained, title to and property in all the Equipment shall pass to Vendee without further transfer or act on the part of Manufacturer, but Manufacturer shall, if requested by Vendee so to do, and at Vendee's expense, execute and deliver to Vendee a bill of sale covering the Equipment when the full Purchase Price with interest and any and all other payments as aforesaid shall have been fully paid and all obligations as aforesaid shall have been fully performed, together with such instrument of satisfaction or release as may be reasonably necessary or appropriate for filing and recording as provided for in Section 19 hereof. Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damage for failure to execute and deliver such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or such instrument or instruments within a reasonable time after written demand by Vendee.

8. Vendee shall insure and keep insured all the Equipment against loss or damage, the risk of which is customarily insured against by railroad companies, in such manner and to such amount as is custom-

arily insured by railroad companies; *provided, however*, that Vendee may act as self-insurer in respect of losses and damage not exceeding \$2,000,000 in respect of any single occurrence.

9. Vendee at its own cost shall keep all the Equipment in good order and proper repair and in case of damage thereto by fire, accident or otherwise, will repair the unit or units of Equipment so damaged and restore them to good running order. In case any unit of the Equipment shall be damaged beyond repair, lost, destroyed, worn out, found to be unfit for the purpose constructed or title thereto shall be taken by any governmental authority by condemnation, exercise of power of eminent domain, or otherwise (such occurrences being hereinafter called "Casualty Occurrences"), Vendee shall deliver to Manufacturer a certificate describing such unit and stating the original actual cost and the fair value thereof (determined as hereinafter provided) at the time of such event, and shall promptly deposit with Manufacturer an amount in cash equal to the fair value of such Equipment. Such cash shall at the request and at the option of Vendee be applied (a) to the cost of acquisition of other railroad equipment (other than work or passenger equipment) of equal value and of substantially as good material and construction, free from all liens and encumbrances, which shall have been built after December 31, 1968, or (b) to prepay (without premium) the instalments of the Purchase Price of the Equipment payable under subparagraph (b) of the fourth paragraph of Section 2 hereof, in the inverse order of maturity thereof. The fair value of such Equipment suffering a Casualty Occurrence and the cost of such other equipment shall be deemed to be (x) the fair value thereof or (y) the original cost thereof less depreciation arising from reasonable wear and tear to be determined by the straight-line method at the rate of $\frac{1}{3}$ of 1% for each calendar month elapsed since the date such Equipment, or such other equipment, was first put into use, whichever is the greater in the case of Equipment suffering a Casualty Occurrence and whichever is the lesser in the case of the cost of such other equipment. Vendee shall cause such other equipment to be marked as provided in Section 10 hereof. Title to such other equipment shall be taken in the name of Manufacturer and shall be immediately subject to all the terms and

conditions of this Agreement in all respects as though part of the original Equipment delivered hereunder. Title to such other equipment shall be warranted in like manner as the original Equipment delivered hereunder by the vendor thereof and the builder of such other equipment or Vendee shall fully indemnify any assignee of such builder against patent liabilities in like manner as the original Equipment. Whenever Vendee shall file with Manufacturer a written direction to apply amounts toward the cost of such other equipment, Vendee shall file with Manufacturer executed counterparts of (1) a certificate of a Vice President or the General Auditor of Vendee certifying as to the factual matters set forth in this paragraph and (2) an opinion of counsel for Vendee that title to such other equipment is vested in Manufacturer free and clear of all claims, liens and encumbrances and security interests and that such equipment has come under and become subject to this Agreement.

So long as none of the events of default specified in Section 15 hereof shall have happened and be continuing, any money paid to Manufacturer pursuant to this Section 9 shall, if Vendee shall in writing so direct, be invested, pending its application as hereinabove provided, in such obligations of the United States of America (hereinafter called "Government Securities"), maturing not later than January 1, 1984, as may be specified in such written direction. Any such obligations shall from time to time be sold and the proceeds reinvested in such Government Securities as Vendee may in writing direct. Any interest or earned discount received by Manufacturer on any Government Securities shall be held by Manufacturer and applied as hereinafter provided. Upon any sale or the maturity of any Government Securities, the proceeds thereof, plus any interest received by Manufacturer thereon, up to the cost (including accrued interest) thereof, shall be held by Manufacturer for application pursuant to this Section 9, and any excess shall be paid to Vendee. If such proceeds (plus such interest) shall be less than such cost, Vendee will promptly pay to Manufacturer an amount equal to such deficiency. Vendee will pay all expenses incurred by Manufacturer in connection with the purchase and sale of Government Securities. If one of the events of default specified in Section 15

shall plainly, distinctly, permanently and conspicuously mark upon each side of each unit, by metal plate or otherwise, in letters not less than one inch in height, the name of Manufacturer followed by the word "Owner" or other appropriate words designated by Manufacturer, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of Manufacturer to the Equipment and its rights under this Agreement. Such marks shall be so located as to be readily visible and to indicate plainly Manufacturer's ownership of the Equipment. In case, at any time before all moneys due or to become due by Vendee under this Agreement shall have been paid in full, such marks shall at any time be removed, defaced or destroyed, Vendee shall immediately, at its own cost, cause the same to be restored or replaced; and if by reason of change of law or otherwise, additional or other marks shall be required to protect the interests of Manufacturer, Vendee shall, with the approval of Manufacturer, provide and install and thereafter maintain the same on all Equipment. The Equipment may be lettered "Southern Pacific Company", "Southern Pacific System", "Southern Pacific Lines", "Southern Pacific", "S.P. Co.", "S.P.", "Pacific Fruit Express Company", "Pacific Fruit Express", "P.F.E.", "P.F.F.", or with the name of any Affiliate (as defined in Section 12 hereof) of Vendee, and may also be numbered for convenience in identification and bear identifying symbols and lettering of Vendee and Union Pacific Railroad Company.

Except as above provided, until all moneys due or to become due by it under this Agreement shall have been paid in full, and all obligations of Vendee hereunder shall have been performed, Vendee shall not allow the name of any corporation or other party to be placed on any of the Equipment, in such manner that such name or designation may be interpreted as a claim of ownership thereof by any person, association or corporation other than Manufacturer. Nothing in this paragraph shall prohibit the use of the Equipment under any pooling arrangement that may be required by governmental agencies, or that may be desired by Vendee, so long as identification of the interest of Vendee and Manufacturer is evidenced, and where it becomes desirable to show the name of any person, association or corporation on any of

the Equipment, such designation shall be in a manner that will not be interpreted as a claim of ownership thereof by Vendee or by any person, association or corporation other than Manufacturer. Vendee shall not change, or permit to be changed, the numbers of any of the Equipment at any time covered hereby (or any numbers which may have been substituted as herein provided) except in accordance with a statement of new numbers to be substituted therefor which previously shall have been filed with Manufacturer by Vendee and filed, recorded or deposited in all public offices where this Agreement shall have been filed, recorded or deposited.

In the event of a transfer or assignment, or successive transfers or assignments, by Manufacturer of title to the Equipment or any unit thereof, or of any of or all Manufacturer's rights hereunder in respect thereof, whenever requested by any such transferee or assignee, Vendee shall, at its expense, change the ownership marks on all Equipment to indicate the title to such Equipment of such transferee or assignee and its succession to any or all rights of Manufacturer hereunder, but the expense of making such change in marks shall be borne by the party or parties requesting such change in connection with any assignment or transfer (other than to successor trustees if the first assignee is a trustee) subsequent to the first assignment or transfer of any of or all the Equipment.

11. Vendee shall bear the risk of and shall not be released from its obligations hereunder in the event of any Casualty Occurrence in respect of any of or all the Equipment from any cause whatsoever after delivery thereof to Vendee. Vendee further agrees to indemnify and save harmless Manufacturer from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by Manufacturer of title to the Equipment or out of the use and operation thereof by Vendee during the period when title thereto remains in Manufacturer or arising out of the transfer of title by Manufacturer pursuant to any provisions of this Agreement; *provided, however*, that the provisions of this Section 11 shall in no way affect the obligations of Builder under any warranty of the Equipment.

This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of the Equipment or the termination of this Agreement for any cause.

12. So long as Vendee shall not be in default under this Agreement, it shall be entitled to the possession of the Equipment and Vendee and any Affiliate of Vendee shall have the full right of use thereof only upon the lines of railroad constituting the Southern Pacific lines, and upon connecting and other railroads in the usual interchange of traffic, but subject at all times to all terms and conditions of this Agreement, and Vendee may receive compensation for such use. The word "Affiliate", as used in this Section 12 and in Section 10 hereof, shall mean Pacific Fruit Express Company or any other corporation which, directly or indirectly, controls or is controlled by, or is under common control with, Vendee.

13. All or any of the rights of Builder under this Agreement, including the right to receive the payments herein provided to be made by Vendee, may be assigned by Builder and reassigned by any assignee at any time and from time to time; *provided, however*, that no such assignment shall subject any assignee to, or relieve Builder from, any of the obligations of Builder as to the construction or delivery of the Equipment or as to any indemnity with respect to such construction or delivery, or from any other duty, obligation or liability, except the duty to execute necessary and proper instruments of transfer as and when Vendee shall be entitled thereto pursuant to the provisions of Section 7 hereof; *provided further*, that no such assignment shall be deemed to enlarge the obligations of Builder, or, Vendee having failed to make any payment or perform any obligation upon its part to be made or performed, subject Builder to any liability resulting from any action taken by any assignee or any failure of any assignee to comply with any of the provisions hereof or of an applicable law in the enforcement of any rights of Builder which may be assigned pursuant to this Section 13 hereof or relieve Vendee of its obligations to any assignor under Section 5, 6 and 11 hereof.

Upon any such assignment the assignor shall give written notice to Vendee, together with a counterpart or certified copy of such assignment, stating the identity and post-office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all of Manufacturer's right, title and interest in and to the Equipment and each unit thereof, subject only to such reservations as may be contained in such assignment. From and after the receipt by Vendee of the notification of any such assignment, all payments thereafter to be made by Vendee hereunder shall, to the extent so assigned, be made to the assignee or upon its written order.

In the event of any such assignment prior to the completion of delivery of the Equipment, Vendee will, in connection with each settlement for a Group of the Equipment, subsequent to such assignment, deliver to the assignee at the time of delivery by Vendee of notice fixing the Closing Date, all documents (in such number of counterparts or copies as may reasonably be requested) required by the terms of such assignment (other than any opinion of counsel for the assignee) to be delivered to the assignee in connection with such settlement.

In the event that any rights under this Agreement are assigned by Builder, or reassigned by any assignee, as herein provided, the rights of such assignee to the Purchase Price or such part thereof as may be assigned, and interest thereon, as well as any other rights as may be so assigned hereunder, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of Builder in respect of the Equipment or the manufacture or delivery thereof, or in respect of any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to Vendee by Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by Vendee against and only against Builder, and shall not be enforceable against any party or parties in whom title to the Equipment or any unit thereof, or the rights of Builder hereunder, shall vest by reason of any assignment or successive assignments.

If this Agreement shall have been assigned by Builder, and the assignee shall not make payment to Builder with respect to any of or

all the Equipment (including any unit of Equipment which has been subject to a Casualty Occurrence), Builder will promptly notify Vendee of such event, and if such amount shall not have been previously paid by the assignee, Vendee will, not later than 90 days after the date such payment was due, pay or cause to be paid to Builder the aggregate Purchase Price of such Equipment, together with interest from the date such payment was due to the date of payment by Vendee at the average prime rate of interest of the five largest New York City banks in effect on the date such payment was due.

The term "Manufacturer" whenever used in this Agreement means, before any assignment of all or any of its rights hereunder as hereinbefore provided, the corporation named in Item 1 of Schedule A hereto and any successor or successors for the time being to its manufacturing properties or business, and, after any such assignment, the assignee or assignees for the time being of all of the rights hereunder, or in the event of any assignment of less than all of the rights hereunder, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also the assignor as regards any rights hereunder that are retained and excluded from such assignment; and the term "Builder" whenever used in this Agreement means, both before and after any such assignment, the corporation named in Item 1 of Schedule A hereto and any successor or successors for the time being to its manufacturing properties or business.

14. Except as permitted by this Agreement, Vendee shall not assign or transfer this Agreement or any of its rights hereunder, nor transfer nor lease the Equipment or any unit thereof without Manufacturer's written consent, and shall not cause nor permit any of the Equipment to be pledged or held for any debt or obligation owing by Vendee or to be in any manner encumbered by a lien or charge equal or superior to the title of Manufacturer thereto; *provided, however*, that Vendee may lease any units of the Equipment to Pacific Fruit Express Company, a corporation organized and existing under and by virtue of the laws of the State of Utah, with an office at 116 New Montgomery Street, San Francisco, California 94105 and Evergreen Freight Car Corporation, a corporation organized and existing under and by virtue

of the laws of the State of Delaware, with an office at 1255 Boylston Street, Boston, Massachusetts 02215 (each of said corporations being hereinafter called Lessee), provided such lease is expressly made subject and subordinate to all the provisions of this Agreement and the rights and remedies of Manufacturer hereunder. In the event of such lease, so long as Vendee shall not be in default under this Agreement, units of the Equipment may be used upon the lines of railroad constituting both the Union Pacific lines and Southern Pacific lines, and upon connecting and other railroads or carriers in the usual interchange of traffic, but subject and subordinate at all times to all terms and conditions of this Agreement, and Vendee or Lessee may receive compensation for such use; *provided further*, that an assignment or transfer to a railroad company (including a successor corporation by consolidation or merger) which shall acquire all or substantially all the property of Vendee, and which, by execution of an appropriate instrument satisfactory to Manufacturer, shall assume and agree to perform each and all the obligations and covenants of Vendee hereunder, shall not be deemed a breach of this covenant.

15. (a) In case Vendee shall make default in the payment of any instalment of the Purchase Price of the Equipment; or shall make default and shall remain in default for more than five days in the payment of interest thereon herein provided for; or shall be in default under the provisions of Section 14 hereof; or shall fail or refuse to comply with any other of the terms and covenants in this Agreement on its part to be kept and performed, or to make provisions satisfactory to Manufacturer for such compliance, for more than 30 days after notice in writing thereof to Vendee; or in case a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against Vendee, and all the obligations of Vendee under this Agreement shall not be duly assumed by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations assumed by such a trustee or trustees within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or in case any

proceedings shall be commenced by or against Vendee for any relief under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and all the obligations of Vendee under this Agreement shall not have been duly assumed by a trustee or trustees or receiver or receivers appointed for Vendee or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or an "event of default" (as therein defined) shall have occurred and be continuing under any of the other Agreements of Conditional Sale entered into by Vendee pursuant to the Agreement dated as of the date hereof among the The First Pennsylvania Banking and Trust Company, as Trustee, the parties named in Annexes A and B thereto and Vendee; then in any such case (herein sometimes called "events of default") and at any time thereafter during the continuance of such default, Manufacturer without further notice or demand, except to the extent necessary in order to comply with any mandatory legal requirements then in force and applicable to such action by Manufacturer, may declare the entire unpaid balance of the Purchase Price of the Equipment immediately due and payable, without further demand, together with interest thereon at the rate of 6.90% per annum to such date of default; and thereafter interest shall be payable by Vendee upon any portion thereof overdue during such time as it shall remain overdue at the rate of 8% per annum; and Manufacturer shall thereupon be entitled to recover judgment for the entire amount so payable by Vendee with interest thereon at said rates, and to collect such judgment out of any property of Vendee wherever situated. Manufacturer may, at its election (and if, before sale or before completion of other enforcement of this Agreement, all costs and expenses of Manufacturer incidental to any such default and to the enforcement by Manufacturer of the provisions hereof, and all sums which shall then have become

due and payable by Vendee hereunder, other than such part of said Purchase Price as shall have become due only because of a declaration of default under this Section 15 as aforesaid, shall have been paid by Vendee, and all other existing defaults shall have been remedied, or provision therefor satisfactory to Manufacturer shall have been made, then and in every such case Manufacturer shall) waive any such event of default and its consequences and rescind and annul any such declaration by notice to Vendee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such cured default had existed and no such declaration had been made; but no such waiver, rescission or annulment shall limit or affect Manufacturer's right, upon any other default, to declare the unpaid balance of said Purchase Price due as aforesaid, or extend to or affect any other default, or impair any rights or remedies consequent thereon.

(b) If Vendee shall make default as hereinabove provided, then at any time after such notice of default and during the continuance of such default, Manufacturer without further notice or demand, except to the extent necessary in order to comply with any such mandatory legal requirements, may take or cause to be taken by its agent or agents immediate possession of the Equipment, or any unit thereof, without liability to return to Vendee any sums theretofore paid, and free from all claims whatsoever except as hereinafter in this Section 15 expressly provided, and may remove the same from the use and possession of Vendee or any other person and for such purpose may enter upon Vendee's premises or wherever any unit of the Equipment may be located, and may use and employ in connection with such removal any available trackage and other facilities or means of Vendee, without process of law; and Vendee shall assemble and deliver the Equipment, with all replacements, improvements, equipment, attachments and accessories thereof, at its own cost at such place or places as Manufacturer may reasonably designate, and in case of such retaking or delivery Manufacturer shall have the right to store the same upon the premises of Vendee without charge until Manufacturer shall desire to remove the same therefrom. The assembling, delivery and storing of the Equipment as hereinbefore provided are of the essence of this Agreement

between the parties and, upon application to any court of equity having jurisdiction in the premises, Manufacturer shall be entitled to a decree against Vendee requiring specific performance hereof. Vendee hereby expressly waives any and all claims against Manufacturer and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

(c) If Vendee shall make default as hereinabove provided, then at any time during the continuance of such default, Manufacturer (after retaking possession of the Equipment as hereinbefore in this Section 15 provided) may at its election retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as Manufacturer shall deem fit. Written notice of Manufacturer's election to retain the Equipment shall be given to Vendee by telegram or registered mail, addressed as provided in Section 16 hereof, and to any other persons to whom the law may require notice, within 30 days after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable. In the event that Manufacturer should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all Vendee's rights in the Equipment shall thereupon terminate and all payments made by Vendee may be retained by Manufacturer as compensation for the use of the Equipment by Vendee; *provided, however*, that if Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to Manufacturer the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in Vendee; *provided further*, that if Vendee or any other persons notified under the terms of this paragraph object in writing to Manufacturer within 30 days from the receipt of notice of Manufacturer's election to retain the Equipment, then Manufacturer may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease, or other disposition as hereinafter

provided or as may otherwise be permitted by law. If Manufacturer shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Section 15.

(d) If Vendee shall make default as hereinbefore provided, then at any time thereafter during the continuance of such default, and after declaring the entire purchase price immediately due and payable as hereinbefore provided, Manufacturer with or without retaking possession thereof may sell the Equipment or any unit thereof, free from any and all claims of Vendee, or of any other party claiming by, through or under it at law or in equity, at public or private sale and with or without advertisement as Manufacturer may determine, all subject to and in compliance with any mandatory legal requirements then in force and applicable to such sale; *provided, however*, that if, prior to such sale and prior to the making of a contract for such sale, Vendee should tender full payment of the entire indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of Manufacturer in retaking, holding and preparing the Equipment for disposition and arrangement for the sale and Manufacturer's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in Vendee. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by Manufacturer in taking possession of, removing, storing and selling the Equipment, shall be credited on the amount due to Manufacturer under the provisions of this Agreement. To the extent permitted by any such legal requirements, any sale or sales hereunder may be held or conducted at such location and at such time or times as Manufacturer may fix, in one lot and as an entirety or in separate lots, and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as Manufacturer may determine in compliance with any such mandatory legal requirements; *provided, however*, that written notice of such sale shall be given to Vendee at least ten days prior thereto, by telegram or registered mail addressed

as provided in Section 16 hereof, together with such other notice, if any, as may be necessary to comply with any such mandatory legal requirements. If such sale shall be a private sale permitted by such legal requirements, it shall be subject to the right of Vendee to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same or better price as offered by the intending purchaser. To the extent not prohibited by any legal requirements then in force and applicable to such sale, Manufacturer may itself bid for and become the purchaser of the Equipment, or any unit thereof so offered for sale, without accountability to Vendee (except to the extent of surplus money received as hereinafter provided in subparagraph (f) of this Section 15) and in payment of such purchase price Manufacturer shall be entitled to the extent aforesaid to have credited on account thereof all sums due to Manufacturer from Vendee hereunder.

(e) Each and every power or remedy hereby specifically given to Manufacturer shall be in addition to every other power or remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by Manufacturer. All such powers and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of Manufacturer in the exercise of any such power or remedy, and no renewal or extension of any payments due hereunder, shall impair any such power or remedy, or shall be construed to be a waiver of any default, or an acquiescence therein.

(f) If after applying all sums of money realized by Manufacturer under the remedies herein provided there shall remain any amount due it under the provisions of this Agreement, Vendee shall pay the amount of such deficit to Manufacturer upon demand, and, if Vendee shall fail to pay the amount of such deficiency, Manufacturer may bring suit therefor and shall be entitled to recover a judgment therefor against Vendee. If after applying as aforesaid all sums realized

by Manufacturer there shall remain a surplus in the possession of Manufacturer, such surplus shall be paid to Vendee.

(g) Vendee will pay all reasonable expenses, including attorneys' fees, incurred by Manufacturer in enforcing its remedies under the terms of this Agreement. In the event that Manufacturer shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit Manufacturer may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

16. Wherever provision is made in this Agreement for any notice or demand to or upon Vendee, or if at any time Manufacturer shall desire to give notice to or make any demand upon Vendee, the same may be given or made by depositing a written statement thereof, enclosed in an envelope, with postage prepaid, in any United States Post Office, directed to Vendee by registered mail at its office, 65 Market Street, San Francisco, California 94105, or at such other address as Vendee may specify in writing, and an affidavit by any person so depositing such notice in respect of such mailing shall be deemed to be and shall be conclusive evidence of the giving and receipt of such notice and of the making of such demand. Notices or demands may be given in similar fashion to Builder at its address as shown in Item 2 of Schedule A hereto, and to any assignee of Builder at such address as such assignee shall give in writing to Vendee and Builder.

17. Any provision of this Agreement prohibited by any applicable law of any jurisdiction, or which by any applicable law of any jurisdiction would convert this Agreement into an instrument other than an agreement of conditional sale, shall as to such jurisdiction be ineffective, without modifying as to such jurisdiction the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable law of any jurisdiction may be waived, they are hereby waived by Vendee to the full extent permitted by law.

Except as otherwise provided in this Agreement, Vendee, to the fullest extent permitted by law, hereby waives all statutory or other

legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, or any unit thereof, and any other requirements as to time, place and terms of sale thereof, any other requirements with respect to the enforcement of Manufacturer's rights hereunder and any and all rights of redemption.

18. Time is of the essence to both parties; however, any extension of time granted by Manufacturer to Vendee for the payment of any sum due under this Agreement, or acceptance of any payment after it shall have become due hereunder, shall not be deemed a waiver of the title of Manufacturer reserved hereunder nor of any of its rights and remedies hereunder or otherwise existing.

19. Vendee at its own expense shall cause this Agreement, and the first assignment hereof, and any amendments or supplements hereto, to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and Vendee shall from time to time do and perform any other act, and will execute, acknowledge, deliver, file and record any and all further instruments, required by law or reasonably requested by Manufacturer, for the purpose of such protection of its title and rights, or for the purpose of carrying out the intention of this Agreement. For the purposes of this Section 19 and the following Section 20, if the first assignee hereof shall be a trustee, any subsequent assignment to a successor trustee shall be deemed the first assignment hereof and such successor trustee shall be deemed the first assignee.

20. Vendee will pay all reasonable costs, charges and expenses, except the counsel fees of Builder, but including the fees and expenses of counsel of the first assignee acquiring an interest in any assignment of this Agreement, and including stamp and other taxes, if any, incident to the printing or other duplicating, execution, acknowledgment, delivery, filing or recording of this Agreement, of the first assignment hereof and of any instrument supplemental to or amendatory of this Agreement or such first assignment. In addition, Vendee will pay the fees and disbursements of a trustee, if the first assignee is a trustee, and

of any party or parties acquiring interests in such first assignment, incurred in connection with such first assignment and payments to the Builder by such first assignee, and in connection with the transfer by any party or parties of interests acquired in such first assignment.

21. Vendee represents and warrants that it is a duly organized and existing corporation in good standing under the laws of Delaware and has the power and authority to own its properties and to carry on its business as now conducted, and that this Agreement has been duly authorized, executed and delivered by Vendee and is a valid and binding instrument enforceable in accordance with its terms.

22. This Agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts, together, shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart.

23. This Agreement, including the Schedules attached hereto and the Specifications hereinabove referred to, constitutes the entire agreement between Vendee and Builder with respect to all terms and conditions for the construction, delivery and sale of the Equipment. No variation or modification of this Agreement, and no waiver of any of its provisions or conditions, shall be valid unless in writing and signed by duly authorized officers of Vendee and Manufacturer.

24. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of California; *provided, however*, that the parties hereto shall be entitled to the benefits of Section 20c of the Interstate Commerce Act. The Vendee warrants that its chief place of business is within the State of California.

IN WITNESS WHEREOF, Builder and Vendee, respectively, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names and their respective corporate seals

to be hereunto affixed, duly attested, as of the day and year first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

By *D. S. Lammell*
Vice President

WPA

Attest:

W. A. Burke
Assistant Secretary

SOUTHERN PACIFIC COMPANY

By *Robert J. McLean*
Vice President and Treasurer

[SEAL]

Attest:

E. Eagan
Assistant Secretary

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.:

On this 23 day of January, 1969, before me personally appeared
B. B. BROWNELL, to me personally known, who, being by me duly sworn,
says that he is a Vice President of GENERAL MOTORS CORPORATION
(Electro-Motive Division), that one of the seals affixed to the foregoing
instrument is the corporate seal of said corporation, that said instrument
was signed and sealed on behalf of said corporation by authority of its
Board of Directors and he acknowledged that the execution of the fore-
going instrument was the free act and deed of said corporation.

[SEAL]

[Signature]
Notary Public

My commission expires: OCTOBER 28, 1971

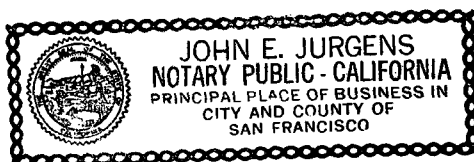
STATE OF CALIFORNIA, }
CITY AND COUNTY OF SAN FRANCISCO, } ss.:

On this 27 day of January, 1969, before me personally appeared
Robert J. McLean, to me personally known, who, being by me duly sworn,
says that he is Vice President and Treasurer of SOUTHERN PACIFIC
COMPANY, that one of the seals affixed to the foregoing instrument is
the corporate seal of said corporation, that said instrument was signed
and sealed on behalf of said corporation by authority of its Board of
Directors and he acknowledged that the execution of the foregoing
instrument was the free act and deed of said corporation.

[STAMP]

[Signature]
Notary Public

My commission expires:



My Commission Expires June 14, 1969

Schedule A

GENERAL MOTORS

ITEM 1: General Motors Corporation (Electro-Motive Division), a Delaware corporation.

ITEM 2: La Grange, Illinois 60525.

ITEM 3: The Temporary Conditional Sales Agreement dated December 27, 1968, by and between Builder and Vendee.

Additional Agreements

Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 1 of the Agreement of Conditional Sale to which this Schedule is attached (hereinafter called the Agreement) and warrants that the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified by Vendee and not manufactured by Builder) and workmanship under normal use and service; Builder's obligations under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment which, within two years after the delivery of such unit to Vendee or before such unit has been in scheduled service 250,000 miles (whichever event shall first occur), shall be returned to Builder with transportation charges prepaid and which Builder's examination shall disclose to its satisfaction to have been thus defective.

This warranty of Builder shall not apply (i) to any locomotive components which shall have been repaired or altered unless repaired or altered by Builder or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of a unit of the Equipment or (ii) to any unit of the Equipment which has been subject to misuse, negligence or accident.

This warranty is expressly in lieu of all other warranties expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of Builder, except for its obligations under Sections 1 through 5 of the Agreement. Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment, except as aforesaid.

SCHEDULE A—Page Two

Builder further agrees with Vendee that neither the inspection as provided in Section 3 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in Section 3 of the Agreement shall be deemed a waiver or a modification by Vendee of any of its rights under these Additional Agreements.

Builder further agrees to hold harmless Vendee from claims, costs and liability to Builder's employees arising out of and in the course of their employment and while on Vendee's premises or equipment except when traveling as revenue passengers on Vendee's trains, and except that Builder shall not be liable for Vendee's own negligence.

Builder further agrees to provide in its orders to suppliers for any equipment, material or devices specified by Vendee the following:

"Seller agrees to indemnify General Motors Corporation (Electro-Motive Division) and/or Southern Pacific Company and their respective successors and assigns against all claims, damages, losses, costs and expenses, including attorney's fees arising or growing out of patents and copyrights, and all royalties in connection therewith, arising or growing out of the purchases and use by General Motors Corporation (Electro-Motive Division) and/or Southern Pacific Company and their respective successors and assigns of the subject matter of this contract."

If Builder is unable to secure the article or material specified by Vendee with the foregoing provision, Vendee agrees to specify another product or to accept the product with such indemnity as can be secured by Builder.

Notwithstanding anything to the contrary contained in the Agreement, it is understood and agreed that there will be incorporated in some of the units of the Equipment a limited number of used components which will be remanufactured by Builder and will be the equivalent of new components, and covered by the warranty set forth in this Schedule A.

Builder reserves the right to make changes in the design of, or add any improvements to, units of the Equipment at any time without incurring any obligation to make similar changes or additions in respect of units of Equipment previously delivered to Vendee.

Schedule B

GENERAL MOTORS

<u>Type</u>	<u>Quantity</u>	<u>Specifications and Requirements</u>	<u>Vendee's Unit Numbers</u>	<u>F.O.B. Point</u>	<u>Unit Base Price</u>	<u>Date and Place of Delivery</u>
3600 h.p. Type SD-45 Six Axle, Six Motor Diesel Freight Locomotive Units.	34	General Motors Corpora- tion's (Electro-Motive Division) Specifications 8062 and modifications thereof.	SP 8982 to SP 9015, both inclusive.	McCook, Illinois.	\$296,453	January through March, 1969; Pine Bluff, Arkansas.

AGREEMENT AND ASSIGNMENT

This Agreement and Assignment, dated as of January 1, 1969, between the corporation first named below the testimonium hereof (hereinafter called "Builder"), and The First Pennsylvania Banking and Trust Company, a corporation organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, as trustee acting under an Agreement dated as of January 1, 1969 (hereinafter called the "Finance Agreement"), whose address is Fifteenth and Chestnut Streets, Philadelphia, Pennsylvania 19101 (said Bank, so acting, being hereinafter called "Assignee"),

WITNESSETH THAT:

WHEREAS, Builder and Southern Pacific Company (hereinafter called "Vendee") have entered into an Agreement of Conditional Sale (hereinafter called the "Agreement of Conditional Sale") dated as of January 1, 1969, covering the construction, sale and delivery, on the terms and conditions therein set forth, by Builder, and the purchase by Vendee, of the Equipment described therein (hereinafter called the "Equipment"); and

WHEREAS, Assignee has offered to purchase from Builder and Builder has agreed to assign and transfer to Assignee, to the extent hereinafter set forth, its right, title and interest in, to and under the Agreement of Conditional Sale, including the right to collect and receive certain payments to become due and payable thereunder from Vendee;

Now, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

1. Builder, in consideration of the sum of \$1 and other good and valuable consideration paid by Assignee to Builder, receipt of which is

hereby acknowledged, as well as of the mutual covenants herein contained, does hereby sell, assign, transfer and set over to Assignee, its successors and assigns, all its rights, title and interest in, to and under the Agreement of Conditional Sale (except the right to manufacture and to deliver the Equipment; the rights to receive the payments specified in subparagraph (a) of the fourth paragraph of Section 2 thereof, the last paragraph of Section 4 thereof, the last paragraph of Section 9 thereof, and the fifth paragraph of Section 13 thereof; reimbursement for taxes paid or incurred by Builder as provided by Section 6 thereof; and, without derogation of the right of Assignee to indemnity from Vendee under the Agreement of Conditional Sale, the right of Builder to indemnity from Vendee as provided in Sections 5 and 11 thereof) and (except as limited above) all its powers, privileges and remedies thereunder, and all right, title and interest of Builder in and to each unit of the Equipment when and as the same are severally manufactured, delivered to and accepted by Vendee, upon payment by Assignee to Builder of the amounts required to be paid under Section 6 hereof in respect thereof, together with and including all payments and moneys to become due from Vendee under the Agreement of Conditional Sale, except the right to receive the payments specified (in the parenthetical clause) above; *provided, however*, that this assignment is without any recourse against Builder for or on account of the failure of Vendee to make any payments provided for in, or otherwise to comply with any of the provisions of, the Agreement of Conditional Sale, and *provided further*, that this assignment shall not subject Assignee to, or transfer, or pass, or in any way affect, modify or relieve Builder or the successor or successors to its manufacturing property and business from, any of the obligations of Builder as to construction or delivery of the Equipment or any obligation with respect thereto contained in Sections 5 and 13 and Schedule A of the Agreement of Conditional Sale. It is understood and agreed that, notwithstanding this assignment (except that the Assignee shall also be entitled to the benefit of Vendee's obligations under said Sections) of the Agreement of Conditional Sale or relieve Vendee from its obligations under Sections 5, 6 and 11 or any subsequent assignment pursuant to the provisions of Section 7

hereof, all said obligations of Builder to Vendee in respect of the Equipment shall be and remain enforceable by Vendee, its successors and assigns, against and only against Builder and any successor or successors to its manufacturing property and business. In furtherance of the foregoing assignment and transfer, Builder hereby authorizes and empowers Assignee in its own name or in the name of its nominee, or in the name of and as attorney, hereby irrevocably constituted, for Builder, to ask, demand, sue for, collect, receive and enforce payment of any and all sums to which Assignee is or may become entitled under this assignment and to demand, sue for and enforce compliance by Vendee with the terms and agreements on its part to be performed under the Agreement of Conditional Sale, but at the expense and liability and for the sole benefit of Assignee.

2. Builder covenants and agrees that it will construct the Equipment in full and complete accordance with the Agreement of Conditional Sale and that it will deliver each unit of the Equipment on completion thereof to Vendee pursuant to and under the Agreement of Conditional Sale (but only after filing of the Agreement of Conditional Sale and this Agreement and Assignment with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, as to which filing Builder may rely on advice from counsel for Assignee) free of all claims, liens, encumbrances and security interests; and that notwithstanding this assignment, it will perform and fully comply with each and all of the covenants and conditions of the Agreement of Conditional Sale to be performed and complied with by Builder. Builder further covenants and agrees that it has legal title to the Equipment and good and lawful right to sell the Equipment as aforesaid, and that it will warrant and defend the same against the lawful demands of all persons whomsoever, based on claims originating prior to the delivery of the Equipment by Builder to Vendee as aforesaid; all subject, however, to the provisions of the Agreement of Conditional Sale and the rights of Vendee thereunder.

3. The rights of Assignee to payment of the assigned portion of the Purchase Price of the Equipment, and interest thereon, as well as

any other rights which have been assigned hereunder, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever, arising out of a breach by Builder or by any successor or successors to its manufacturing property and business, of any obligations in respect of the manufacture or delivery of the Equipment or under Sections 5 and 13 and Schedule A of the Agreement of Conditional Sale, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to Vendee by Builder or the successor or successors to its manufacturing property and business. Any and all such obligations shall be and remain enforceable by Vendee against and only against Builder and the successor or successors to its manufacturing property and business and shall not be enforceable against Assignee or any party or parties in whom title to the Equipment or any unit thereof or the rights of Builder under the Agreement of Conditional Sale shall vest by reason of this Agreement and Assignment or transfer or of successive sales, assignments or transfers, and Builder will save, indemnify and keep harmless Assignee from and against all expenses, loss or damage suffered by reason of any such obligations.

Builder will save, indemnify and hold harmless Assignee from and against any and all royalties, damages, claims, suits, actions or other proceedings and against all expenses, including counsel fees, incurred and judgments entered as a result thereof arising in any way out of alleged infringement of patents or other rights covering the Equipment, or any part or appliance thereof, except devices and specialties designated by Vendee to be used by Builder in the building of the Equipment and which are not manufactured by Builder.

Builder agrees that any amounts payable to it by Vendee in respect of the Equipment, whether pursuant to the Agreement of Conditional Sale or otherwise, not hereby assigned to Assignee, shall not be secured by any lien or charge on the Equipment or any unit thereof.

If, in any suit brought by Assignee against Vendee for any assigned portion of the Purchase Price, any defense, set-off, counter-

claim or recoupment is asserted by Vendee based on any breach or alleged breach by Builder of any obligation in respect of the Equipment, or the manufacture, delivery or warranty thereof, Assignee will give notice to Builder of any such suit, and shall promptly move or take other appropriate action on the basis of Section 13 of the Agreement of Conditional Sale, to strike any such defense, set-off, counterclaim or recoupment asserted by Vendee therein, and if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, set-off, counterclaim or recoupment as a triable issue in such suit, proceeding or action, Assignee shall promptly notify Builder of any such defense, set-off, counterclaim or recoupment asserted by Vendee, and Builder shall thereafter be given the right by Assignee, at Builder's expense, to compromise, settle or defend against such defense, set-off, counterclaim or recoupment.

4. Builder covenants and agrees that, at the time of delivery of each unit of Equipment to Vendee, there will be plainly, distinctly, permanently and conspicuously marked on each side of each unit of Equipment in letters not less than one inch in height, the words:

"The First Pennsylvania Banking and Trust Company,
Trustee, Owner.
Southern Pacific Company, Conditional Vendee."

5. Builder covenants and agrees with Assignee, its successors and assigns, that, upon request of Assignee, its successors or assigns, Builder will execute any and all instruments which may be necessary or proper in order to discharge of record the Agreement of Conditional Sale or any other instrument evidencing any interest of Builder therein or in the Equipment.

6. Assignee, on the Closing Date fixed as provided in Section 2 of the Agreement of Conditional Sale with respect to a Group (as defined

in said Section 2), shall pay to Builder an amount equal to that portion of the Purchase Price (as defined in said Section 2) of the Equipment in such Group not payable by Vendee pursuant to subparagraph (a) of the fourth paragraph of said Section 2, provided that there shall have been delivered to Assignee, in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(a) A Bill of Sale from Builder to Assignee, transferring to Assignee title to the units of Equipment in such Group and warranting to Assignee and to Vendee that at the time of delivery to Vendee, pursuant to and under the Agreement of Conditional Sale, Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, encumbrances and security interests of any nature except only the rights of Vendee under the Agreement of Conditional Sale;

(b) A certificate or certificates signed by one or more inspectors or other authorized representatives of Vendee stating that the units of Equipment in such Group have been inspected and accepted by him or them on behalf of Vendee and further stating that all such units have been marked as required by Section 4 hereof;

(c) A duplicate invoice for the units of Equipment in such Group accompanied by or having endorsed thereon a certification by Vendee as to the correctness of the prices of such units;

(d) An opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and the Investors named in the Finance Agreement, dated as of such Closing Date, stating (i) that the Agreement of Conditional Sale has been duly authorized, executed and delivered and is a valid and binding instrument enforceable in accordance with its terms, (ii) that the

Finance Agreement has been duly authorized, executed and delivered by Vendee and Assignee and is a legal, valid and binding instrument, (iii) that this Agreement and Assignment has been duly authorized, executed and delivered by Builder and Assignee and is a legal, valid and binding instrument enforceable in accordance with its terms, (iv) that the Agreement of Conditional Sale and this Agreement and Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and that no other filing or recordation is necessary for the protection of the rights of Assignee in any state of the United States of America or the District of Columbia, (v) that Assignee is vested with all the right, title and interest of Builder in and to the Agreement of Conditional Sale purported to be assigned to it by this Agreement and Assignment, (vi) that title to the units of Equipment in such Group is validly vested in Assignee, free of all claims, liens, encumbrances and security interests except only the rights of Vendee under the Agreement of Conditional Sale, (vii) that no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Agreement of Conditional Sale, (viii) that registration of the Agreement of Conditional Sale or this Agreement and Assignment or of the interests acquired herein is not required under the Securities Act of 1933, as amended, and (ix) that investment in the Conditional Sale Indebtedness (as defined in the Finance Agreement) is a legal investment for savings banks under subdivision 7 of Section 235 of the Banking Law of the State of New York.

(e) An opinion of counsel for Builder, dated as of such Closing Date, stating (i) that Builder is a duly organized and existing corporation in good standing under the laws of its state of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) that the Agree-

ment of Conditional Sale has been duly authorized, executed and delivered by Builder and is a valid instrument binding upon Builder and enforceable against Builder in accordance with its terms, (iii) that this Agreement and Assignment has been duly authorized, executed and delivered by Builder and is a valid instrument binding upon Builder and enforceable against Builder in accordance with its terms, (iv) that Assignee is vested with all the right, title and interest of Builder in and to the Agreement of Conditional Sale purported to be assigned to it by this Agreement and Assignment, (v) that title to the units of Equipment in such Group is validly vested in Assignee, and such units, at the time of delivery thereof to Vendee under the Agreement of Conditional Sale, were free of all claims, liens, encumbrances and security interests except only the rights of Vendee under the Agreement of Conditional Sale, and (vi) that the Temporary Conditional Sale Agreement, if any, of the Equipment referred to in Item 3 of Schedule A to the Agreement of Conditional Sale has terminated with respect to the units of the Equipment in such Group and the units of the Equipment which may have been subject thereto are free of all claims, liens, encumbrances and security interests arising thereunder;

(f) A favorable opinion of counsel for Vendee, dated as of such Closing Date, covering the matters referred to in subparagraph (d) of this Section 6 and stating (i) that Vendee is a duly organized and existing corporation in good standing under the laws of its state of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) that the Temporary Conditional Sale Agreement, if any, of the Equipment referred to in Item 3 of Schedule A to the Agreement of Conditional Sale has terminated with respect to the units of the Equipment in such Group and the units of the Equipment which may have been subject thereto are free of all claims, liens, encumbrances and security interests arising thereunder; and

(g) Unless payment of the amount payable pursuant to subparagraph (a) of the fourth paragraph of Section 2 of the Conditional Sale Agreement shall be made by Assignee with funds furnished to it for that purpose by Vendee, a receipt from Builder for such payment.

Each opinion delivered pursuant to subparagraphs (d), (e) or (f) shall be addressed to Assignee (and, in the case of each opinion delivered pursuant to subparagraphs (d) and (e), to the Investors named in the Finance Agreement). In giving the opinions specified in subparagraphs (d), (e) and (f) of the first paragraph of this Section 6, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraph (d), counsel may rely, as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for Builder or the opinion of counsel for Vendee as to such matter.

The obligation of Assignee to make payment for any Group is hereby expressly conditioned upon the prior receipt by Assignee, as provided in the Finance Agreement, of all the funds to be furnished to Assignee by the Investors (as defined in the Finance Agreement) and the availability to Assignee of such funds to make payment for such Group. In the event that Assignee shall not make any such payment, Assignee shall reassign to Builder, without recourse to Assignee, all right, title and interest of Assignee in and to the units of Equipment in respect of which payment has not been made by Assignee.

Assignee shall not be obligated to make any payment for any Group at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Agreement of Conditional Sale would constitute an event of default, shall be subsisting under Section 15 of the Agreement of Conditional Sale ...

It is understood and agreed that Assignee shall not be required to make any payment in respect of any Equipment excluded from the Agreement of Conditional Sale pursuant to Section 4 thereof.

7. It is mutually agreed that Assignee may assign, and/or issue participations in, its rights under the Agreement of Conditional Sale in respect of all or any designated units of Equipment, including the right to receive any payments due or to become due to it from Vendee thereunder in respect to such units. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all of the obligations of Assignee hereunder.

8. Builder hereby (a) represents and warrants to Assignee, its successors and assigns, that the Agreement of Conditional Sale was duly authorized and lawfully executed and delivered by it for a valuable consideration and that it is a valid and existing agreement and is binding upon Builder in accordance with its terms, and is now in force without amendment thereto; and (b) covenants and agrees that it will, from time to time and at all times, at the request of Assignee, or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises, to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to Assignee or intended so to be.

9. The terms of this Agreement and Assignment and all rights and obligations hereunder shall be governed by the laws of the State of California; *provided, however*, that the parties shall be entitled to all rights afforded by Section 20c of the Interstate Commerce Act. Such terms, rights and obligations may not be changed orally, but may be changed only by an agreement in writing signed by the party against whom enforcement of such change is sought.

IN WITNESS WHEREOF, Builder and Assignee have caused this instrument to be executed in their respective names by their respective officers thereunto duly authorized and their respective corporate seals to be hereunto affixed, duly attested, as of the day and year first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

[Seal]

By *[Signature]*
Vice President

Attest:

[Signature]
Assistant Secretary

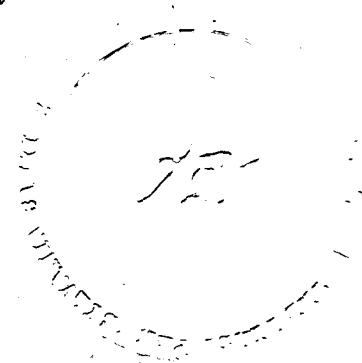
THE FIRST PENNSYLVANIA BANKING
AND TRUST COMPANY,
as Trustee

[Seal]

By *[Signature]*
Vice President

Attest:

[Signature]
Assistant Secretary



[Handwritten text]

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.:

On this 23 day of January, 1969, before me personally appeared **B. B. BROWNELL**, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL]

[Signature]
.....
Notary Public

My commission expires: OCTOBER 28, 1971

COMMONWEALTH OF PENNSYLVANIA, }
COUNTY OF PHILADELPHIA, } ss.:

On this 29th day of January, 1969, before me personally appeared *H. M. Kruger*, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL]

[Signature]
.....
Notary Public

My commission expires:

MARY E. DAVIS, NOTARY PUBLIC
PHILADELPHIA, PHILADELPHIA COUNTY, PA.
MY COMMISSION EXPIRES JULY 3, 1972

ACKNOWLEDGMENT OF NOTICE
OF ASSIGNMENT

Southern Pacific Company hereby acknowledges due notice of the assignment made by the foregoing Agreement and Assignment, as of January 1, 1969, and assents and agrees to be bound by its terms.

SOUTHERN PACIFIC COMPANY

By *Robert J. McLean*
Vice President and Treasurer